

DEPARTMENT OF STATE REVENUE

04-20140568.LOF

**Letter of Findings Number: 04-20140568
Enhanced Prepaid Wireless Service Charge
For Tax Years 2011-12**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Taxpayer did not provide any documentation to substantiate its claim that the additional sales found during the audit pertained to a different business. The audit contained the correct business name and the correct Tax Identification Number. The proposed assessments were appropriate.

ISSUE

I. Sales Tax–Enhanced Prepaid Wireless Charge.

Authority: IC § 6-8.1-5-1; IC § 36-8-16.6-9; IC § 36-8-16.6-11; [IC 36-8-16.6-12](#); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests proposed assessments for additional Enhanced Prepaid Wireless Charges.

STATEMENT OF FACTS

Taxpayer is an individual. During tax years 2011, 2012, and 2013, Taxpayer was the sole proprietor of an Indiana business that sold cell phones, cell phone plans, and cell phone accessories. The Indiana Department of Revenue ("Department") audited Taxpayer for enhanced prepaid wireless charge for tax years 2011 and 2012. Taxpayer documented its sales on notepads. The Department found that Taxpayer did not remit enhanced prepaid wireless service charge ("EWPC") during the audit period. The Department therefore issued proposed assessments for additional EWPC, penalty, and interest for years 2011 and 2012. The Department used the Pricewaterhouse Wireless Industry Survey to determine the amount of EWPC that should have been collected and remitted by Taxpayer. Taxpayer protested the proposed assessments. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax–Enhanced Prepaid Wireless Charge.

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Indiana imposes an enhanced prepaid wireless charge on the purchase for any purpose other than resale of prepaid wireless telecommunications service from a seller. IC § 36-8-16.6-9; IC § 36-8-16.6-11(a).

- (a) A seller shall collect the enhanced prepaid wireless charge from the consumer with respect to each retail transaction.
- (b) The seller shall disclose to the consumer the amount of the enhanced prepaid wireless charge. The seller may separately state the amount of the enhanced prepaid wireless charge on an invoice, a receipt, or a similar document that the seller provides to the consumer in connection with the retail transaction.
- (c) Subject to section 15 of this chapter, a seller shall remit enhanced prepaid wireless charges to the department at the time and in the manner prescribed by the department.

Therefore, a seller is required to collect the EWPC from its customer each time it sells prepaid wireless telecommunications services and to remit the charges collected to the Department.

Taxpayer claims that the audit report refers to a business called "Wireless Prepaid Wireless", and that Taxpayer has never operated under that business name. Taxpayer suggests that a mistake was made during the audit and the proposed assessments must pertain to another business. However, a review of the audit report reveals that the report only refers to Taxpayer's correct business name. The report contains a subsection heading "Wireless Prepaid", but this heading is merely indicating the type of tax that the section discusses. In addition, the audit report has the correct Tax Identification Number and the correct business address.

During the protest process, Taxpayer provided documents regarding its business operating expenses such as rent, utility costs, etc. None of the documentation supplied pertains to Taxpayer's actual sales of items subject to the EWPC during the audit period. Therefore, Taxpayer has not provided any documentation to substantiate its claim that the Department issued proposed assessments to the wrong business. Also, Taxpayer has not provided any documentation to show that its unreported sales were exempt from EWPC. Therefore, Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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